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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,968	03/08/2004	Kurt A. Habecker	3600-198-02	8631

  

EXAMINER	
YANG, JIE	

  

ART UNIT	PAPER NUMBER
1793	

  

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12/28/2007	PAPER

7590 12/28/2007  
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/795,968	<b>Applicant(s)</b> HABECKER ET AL.	
	<b>Examiner</b> Jie Yang	<b>Art Unit</b> 1793	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 36-58 and 61-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-58, and 61-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/2007 has been entered.

### ***Status of the Claims***

Claims 1-35, and 59-60 are cancelled; Claims 36-58, and 61-65 are pending wherein claims 36 and 65 are amended.

### ***Status of the Previous Rejections***

Previous rejections of Claims 36-43, 50-56, 58, 61 and 65 under 35 U.S.C. 102 (b) as anticipated by, or in the alternative under 103 (a) as being unpatentable over Chang (US patent 5,448,447, Hereafter '447) are still maintained. The new limitation in view of the applicant's amendment in claims 36, 65 has been addressed as following. New evidence is added in view applicant's arguments.

Previous rejections of Claims 48, 49, 52, 57 and 62-64 under 103 (a) as being unpatentable over Chang (US patent 5,448,447, Hereafter '447) are still maintained.

Previous rejections of Claims 36-47, and 49-58, and 61-65 under 103 (a) as being unpatentable over WO 98/37248 (WO'248) in view of Chang (US patent 5,448,447, Hereafter '447) are still maintained.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36-43, 50-56, 58, 61 and 65 are rejected under 35 U.S.C. 102(b) as anticipated by Chang (US patent 5,448,447, Hereafter '447), or in the alternative, under 35 U.S.C. 102(b) as anticipated by '447 as evidenced by He et al (US, 6,786,951 B2, thereafter '951).

'447 is applied to the claims 36-43, 50-56, 58, 61 and 65 for the same reason as state in the previous rejection dated 7/19/2007.

As to the amendment in claims 36 and 65, regarding "agglomerated" limitation, '447 teaches the powder may be agglomerated by heat treatment and crushed to a certain particle size (Col. 1, line 61 to Col.2, line 8 and col.4, lines 1-18 of '447). The other amendments in the claims 36 and 65 did not

change the claimed scopes. Therefore, '447 anticipates the claimed invention.

Alternately, '477 teaches the chemical and physical properties of tantalum and niobium are known by those skilled in the art to be sufficiently similar to permit substitution of either metal (Col.3, lines 60-68), which is further evidenced by '951. '951 teaches a high surface area tantalum and/or niobium powders via the reduction of the corresponding tantalum and/or niobium oxides for electrolytic capacitors application (Abstract of '951). Under the similar treatment conditions (Examples 1-6 of '951), the Ta and Nb powders have been shown a similar electrical properties (refer to table 6-7 of '951). See MPEP 2112 I&II.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 48, 49, 52, 57 and 62-64 are rejected under 35 U.S.C. 103 (a) as being unpatentable over '447) in view of '951.

'447 is applied to the claims 48, 49, 52, 57 and 62-64 for the same reason as state in the previous rejection dated 7/19/2007.

'951 is applied to 48, 49, 52, 57 and 62-64 as an new evidence for the same reason as discussed in 102/103 rejections for the independent claim 36.

Claims 36-47, and 49-58, and 61-65 are rejected under 103 (a) as being unpatentable over WO 98/37248 (WO'248) in view of '447, and further in view of '951.

WO'248 in view '447 is applied to the claims 36-47, 49-58, and 61-65 for the same reason as state in the previous rejection dated 7/19/2007. '951 is applied to 36-47, 49-58, and 61-65 as an new evidence for the same reason as discussed in 102/103 rejections for the independent claims 36 and 65.

### ***Response to Arguments***

Applicant's arguments filed on 10/19/2007 with respect to claims 36-58 and 61-65 have been fully considered but they are not persuasive.

In the remark, applicant argues in the arguments A, C, and E that '477 (Chang) does not suggest any lower sintering temperature, anodization voltage, lower formation voltage, or higher BET surface area. However these are process limitations

in a product claim. See MPEP 2113 and refer to the discussions in the previous office action marked 7/17/2007.

In the remark, applicant argues in the arguments B, and D, that '477 does not really show the interchangeable between tantalum and niobium. In response, please refer to new evidence listed in the instant office action and the discussions above.

In the remark, applicant argues WO'248 does not teach niobium powder and WO'248 in view of '477 does not teach the interchangeability between tantalum and niobium. In response, applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Regarding the interchangeability between tantalum and niobium, please refer to new evidence listed in the instant office action and the discussions above.

Regarding the applicant argument related to the evidence of Jonathon L. Kimmel, new listed reference '951 teaches Ta and Nb powders produced by the similar process have similar electrical properties, which are suitable for capacitor applications (Refer

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to table 6-7 and the rejections for the independent claims 36 and 65 as discussed above).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jie Yang whose telephone number is 571-2701884. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-2721244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JY

(JY)

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